

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL ORRIS, SR.,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 34935

FILED

DEC 07 2000

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

ORDER AFFIRMING IN PART AND REMANDING IN PART

TO CORRECT JUDGMENT OF CONVICTION

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of battery with the use of a deadly weapon. The district court sentenced appellant to serve 24 to 96 months in the Nevada State Prison.

Appellant contends that the district court erred by (1) failing to make an express determination that a witness was a qualified expert; (2) permitting expert testimony as to whether the object used to strike the victim was a deadly weapon; and (3) failing to canvass appellant regarding counsel's refusal to call a witness pursuant to SCR 172(3) and 173(2). We conclude that appellant's contentions lack merit. However, we remand this case for the limited purpose of correcting the judgment of conviction to reflect that appellant was convicted pursuant to a jury verdict.

Appellant first contends that the district court erred by failing to determine that Dr. Clark was a qualified expert. We disagree and conclude that the district court conveyed its determination that the witness was a qualified expert when it overruled the defense objection based on the witness's qualification as an expert witness. See *Mulder v. State*, 116 Nev. 1, 13 n.2, 992 P.2d 845, 852 n.2 (2000) (noting that, in ruling on whether witness may testify as an

expert, trial court should refrain from making any comments that could prejudicially promote credibility of the witness), petition for cert. filed, No. 99-9766 (U.S. May 30, 2000).

Appellant next contends that the district court erred in permitting expert testimony as to whether the object used to strike the victim was a deadly weapon. In particular, appellant argues that: (1) expert testimony is not required because the issue is within the knowledge of a lay person; and (2) the probative value of the testimony was substantially outweighed by the danger or unfair prejudice. However, appellant failed to object to the testimony on these grounds. As a general rule, the failure to object to evidence offered at trial precludes appellate review of a challenge to the admissibility of the evidence. See NRS 47.040; see also Wilson v. State, 86 Nev. 320, 326, 468 P.2d 346, 350 (1970). We therefore need not consider appellant's contentions unless they rise to the level of plain error that affected appellant's substantial rights. See NRS 178.602; see also NRS 47.040(2). After reviewing the record, we conclude that appellant cannot demonstrate plain error in the admission of Dr. Clark's testimony.

Finally, appellant contends that the district court erred in failing to canvass appellant regarding counsel's refusal to call a witness pursuant to SCR 172(3) and 173(2). Appellant cites no authority in support of this contention. Accordingly, we decline to address it.¹ See Maresca v. State, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987).

¹To the extent that appellant argues that his trial counsel provided ineffective assistance of counsel by failing to call the witness to testify, such a claim is not appropriate for review on direct appeal and we decline to consider it. See Feazell v. State, 111 Nev. 1446, 1449, 906 P.2d 727, 729 (1995).

Having concluded that none of appellant's contentions warrant relief, we affirm the judgment of conviction. However, our review of the judgment of conviction revealed a clerical error. The judgment of conviction states that appellant was convicted pursuant to a guilty plea when, in fact, he was convicted pursuant to a jury verdict. Accordingly, we remand this matter to the district court for the limited purpose of entering a corrected judgment of conviction.

It is so ORDERED.

Young, J.
Young

Maupin, J.
Maupin

I dissent.

Becker, J.
Becker

cc: Hon. James W. Hardesty, District Judge
Attorney General
Washoe County District Attorney
Washoe County Public Defender
Washoe County Clerk